

INFORMATION

For the Town of Leith,

Against

The Magistrats of Edinburgh.

L *Et* being Ancientlie the Head Burgh of the Baronie of *Restalrig*, there was a Contract betwixt *Mary* Queen Dowager, and Regent to Queen *Mary* her Daughter on the one part, and the Inhabitants of the Town of *Leith* on the other, vvhierby the Queen was obliged to procure the Superioritie of the said Burgh from the Baron of *Restalrig*, for the use and Behove of the Inhabitants thereof; and the Contract bears that the Superioritie vvas accordinglie acquired, and on the other part the Inhabitants vvere obliged to pay a certain Sum of Mony mentioned in the Contract.

The Inhabitants payed the Sum vvhich vvas the price of the said Superioritie and the Queen did grant a Letter of Bailliarie vvhich vvas expedie under the great Seal; by vertue vvhierof they vvere in use to make choise of their ovvn Baillies, but the Right of Superioritie appears not to have been dispoined to them by the Queen: but upon the contrair, the Town of *Edinburgh* did thereafter acquire Right to the said Superioritie.

The Magistrats of *Edinburgh* being become Superiors, nothvwithstanding the Inhabitants were truely the first Purchassers. The said Inhabitants having long grumbled and complained of the Exactions and Impositions laid upon them by the Town, vvhich they vvere not vvarranted to do as Superiors, or by anie other Act or Law of the Kingdom.

These Impositions being still continued and increased, the Inhabitants have at last raised an Declarator of their Priviledges and of their Immunitie from the Burdens that are from time to time imposed on them.

The Result of this Declarator depending necessarlie upon the Rights of either Partie, the ordinarie did at first incline before Answer, to appoint either Partie to produce vvhath Writs and Evidents they intended to found on, in the Cause. whereby the debate would have proceeded more clearly, and distinctlie, and the Relevancie and probation might have been determined at once, but the Magistrats inclining to keep their Rights in the Clouds, do avoid all production, whereby the pursuers being put to debate the Relevancie, they vwill not trouble the Lords vwith the the whole points of their Declarator, complexlie but that the Debate may proceed the more distinctlie, they will insist upon the severall Points separatlie, and begin at that vvhich is most important, *viz.*

They contend that either they ought to be considered as a Burgh of Baronie or anie other Societie of people having no privilege of Trade, but vvhath is competent to the other Burghs of Baronie or the whole Leidges, and in that case they insist to be declared free from all Stents, Impositions, imposed by Law, upon the Inhabitants of Royal Burrows and their Tenements within Burgh, or otherways if the Defenders vwill impose Stents and other Burdens consequent upon a free Trade, which the Law imposes onlie upon Royal Burrows; in that case, that they ought to be declared to have the Liberties and Priviledges of Royal Burrows, and especiallie of the Trade competent to them, by the Laws of the Kingdom.

The reason that moved the Inhabitants to raise the Declarator, and especiallie to insist in this Article, is because the Town of *Edinburgh* being onlie their Superiors, and not so much as Superiors to the Inhabitants of Temple and Church-lands of *Leith*, they Restraine the said Inhabitants from all manner of Trade, even Retailing, which hath been enjoyed by Burghs of Barronie, and generallie by all the Leidges. Nevertheless, they do rigorously impose upon them, all the Burdens which the Law hath annexed to the Trade of the Royal Burrows onlie, in so far

as they stent their Dwelling-houses ; and further do impose personal Stent upon the saids Inhabitants, as if they were Traders, while in the mean time, they are debarred from all manner of Trade.

All the Defences that hath been yet offered against the Pursuers clear and well founded Declarator, are these. 1. The Magistrats have Charters Incorporating the Town of *Leith* with the Town of *Edinburgh*, particularlie a Charter *in anno* 1636, containing a *Novo Damus*, and consequentlie they are lyable and subject to bear a Proportion of the Burdens of the Burgh of *Edinburgh*. 2. The Town of *Edinburgh* hath been in constant use and possession of Imposing Burdens and Cesses upon the Town of *Leith*, past Prescription.

It was replied 1. As to the Towns pretended Charters ; such Charters impetrat from his Majestie *periculo petentis*, are *Salvo Jure Cujuslibet*, and cannot hurt or pre-judge any third Partie, or subject them to such Burden, to which Law hath not made them liable.

2. Supposing the Charters Incorporating *Leith* to *Edinburgh* do stand good, yet how come the Magistrats to divide the Benefite from the Burden of that Incorporation ? They would have *Leith* Incorporat as to all Burden imposed upon Trade, which they would infer as a necessary Consequence of that pretended Union ; but still they alledge, that there remains a Separation and Distinction betwixt *Edinburgh* and *Leith* as to the priviledge of Trade. Whereas the Inhabitants of *Leith*, contend with far better reason, that the Benefite and Burden of Trade, are inseparable Connected, and cannot be divided by anie Charter, or otherways. Nor is it pretended, that the Charter doth expresse or import, that the Pursuers shall be subject to the Burden of Trade, without the Benefite.

As to the second Allegiance of Prescription, by constant use of imposing past memorie of man.

It's Answered, there can be no Prescription. 1. Because all Prescriptions do require a Title, & *bona fides*, here there can be neither to Impose a continual Burden which the Law hath Annexed to Trade upon the Pursuers, who are at the same time Restrained from the Benefit and Priviledge of Trade. 2. The right of Imposing of Stent cannot prescribe, because Stent is not a constant Currant Burden, but is Imposed from time to time ; and some time Intermitts, so that every Stent hath its own particular Rule ; and whatever Unwarrantable Method may be Used in the Imposing, or Exacting thereof, that gives no Warrant for the same Irregular Imposition in time-coming : And in a word, the Subject of all Prescriptions ought to be perpetual, whereas Cesses are temporary. 3. If the Defenders Insist upon Prescription, and if the same were relevant all the time, during which no Cesses were current would be deduceable, and the Pursuers deny the constant Possession, or that they have Subjected themselves to the Magistrats Impositions. 4. There can be no Prescription, because there are many late Acts of Parliament, especially in *annis* 1672, 1690 and 1693, which Regulat the Priviledge of Trade, and by the last of these Acts, a Free-Trade is Allowed to the whole Nation, whether in Burgh or Landward, provideing they be willing to Undertake a Burden futeble to their Benefit ; And therefore the Defenders can never pretend that the Pursuers shall be Excluded from the Benefit of these publick Laws, and at once Restrained from the Benefite of Trade, and rigorously Subjected to all the Burdens of it.

In respect whereof, it is Humbly Desired and Expected, that the Lords will sustain the Declarator, and Restraine any farder Imposition upon the Pursuers, who Enjoy not the Priviledg of Free-Trade ; And if any Difficulty remain, that the Lords would Summarly allow a Hearing in their own Presence, upon the Poynt contained in the above-written Information.